

COEUR EXPLORATIONS, INC.

IBLA 85-755

Decided December 22, 1987

Appeal from a decision of the Nevada State Office, Bureau of Land Management, declaring unpatented mining claims N MC 306299 through N MC 306346 null and void ab initio.

Affirmed.

1. Mining Claims: Withdrawn Land--Withdrawals and Reservations:
Generally--Withdrawals and Reservations: Effect of

Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location, or entry under the general land laws, including the mining laws, to the extent specified in the notice.

2. Mining Claims: Withdrawn Land--Withdrawals and Reservations:
Generally--Withdrawals and Reservations: Effect of

A lode claim located on land segregated and closed to mineral entry by publication of notice of an application for withdrawal of the land in the Federal Register is properly declared null and void ab initio.

APPEARANCES: Steven Berke, Land Manager, Coeur Explorations, Inc., Sparks, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Coeur Explorations, Inc. (Coeur), has appealed from a May 19, 1985, decision of the Nevada State Office, Bureau of Land Management (BLM), declaring unpatented lode mining claims CH 1 through CH 24 and CH 29 through CH 52 (N MC 306299 through N MC 306346), null and void ab initio because the land upon which the claims were located had been withdrawn from entry under the public land laws including the general mining laws.

On May 31, 1984, appellant filed notices of location for the claims in question with the Nevada State Office, BLM, in compliance with the provisions

of 43 U.S.C. § 1744(b) (1982). Section 1744(b) provides, in relevant part, that "[t]he owner of an unpatented lode or placer mining claim * * * located after October 21, 1976 shall, within ninety days after the date of location of such claims, file in the office of the [BLM] designated by the Secretary a copy of the official record of the notice of location * * *." The notices of location filed by appellant included notices of location of claims in secs. 11, 12, 13, and 14, T. 15 N., R. 30 E., Mount Diablo Meridian, Nevada.

In its statement of reasons on appeal, appellant contends that the terms used by BLM when withdrawing land are ambiguous and confusing. Appellant states: "[W]ords like proposed, and application for withdrawal, never clearly state that the land is not open to entry." Further, appellant contends that the remarks on the historical index for secs. 11, 12, 13, and 14, T. 15 N., R. 30 E., would lead one to believe that on October 20, 1984, the land was opened to mineral entry pursuant to a joint resolution of Congress.

[1, 2] The BLM decision on appeal noted that the Department of the Navy had applied for the withdrawal of the lands in secs. 11, 12, 13, and 14, T. 15 N., R. 30 E., Mount Diablo Meridian, Nevada, on September 22, 1982 (application N 37171), and that BLM had published a notice of the withdrawal application in the Federal Register on October 21, 1982.

Publication of the notice of a withdrawal application in the Federal Register segregates the lands described in the application from settlement, sale, location, or entry under the public land laws, including the mining laws, to the extent specified in the notice. 43 CFR 2310.2.

The notice, as printed in the Federal Register, stated in part:

Effective on the date of publication of this notice, the above-described lands shall be segregated from the operation of the public land laws, including the mining laws * * *. The segregative effect of this proposed withdrawal shall continue for a period of two years, unless sooner terminated by action of the Secretary of the Interior.

47 FR 46893 (Oct. 21, 1982). Thus the public lands described in the notice became segregated from entry under the general mining laws on October 21, 1982.

Subsequent to this temporary withdrawal, by joint resolution of Congress, dated October 12, 1984 (98 Stat. 1840, P.L. 98-473 (H.J. Res. 648); Oct. 12, 1984), Congress directed that: "The segregative effect of the Department of the Navy withdrawal application N 37171 * * * shall continue until such withdrawal is acted upon by the Congress."

The confusion on appellant's part appears to arise from the notation on the historical index for T. 15 N., R. 30 E., Mount Diablo Meridian. While this index could be deemed as somewhat confusing, any confusion it may have created is put to rest by the wording of the notice in the Federal Register and the wording of the Joint Resolution. We agree that it is unfortunate

that appellant's employee may have been misled by the language of the historical index. However, an ambiguity on the index notation cannot be used to overcome a clear statement of intent in the documents creating and extending the period of the withdrawal.

Appellant's notices of location state that the claims were located on May 31, 1984. However, the lands upon which appellant located the claims had been closed to entry under the mining laws on October 21, 1982, and remained closed on the date of location. Thus, BLM properly declared the claims to be null and void ab initio. See, e.g., John C. Neill, 80 IBLA 39 (1984); Philip A. Cramer, 74 IBLA 1 (1983); Grace P. Crocker, 73 IBLA 78 (1983).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1., the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Anita Vogt
Administrative Judge
Alternate Member

Will A. Irwin
Administrative Judge

